

Message Text

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ACTION IO-14

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E.O. 11652: N/A
TAGS: PFOR, UN
SUBJECT; UN CONFERENCE ON SUCCESSION OF STATES IN RESPECT
- OF TREATIES

1. FOLLOWING A LONG DEBATE, THE U.S. AND NETHERLANDS
PROPOSAL FOR A NEW ARTICLE 39 BIS ON DISPUTE SETTLEMENT
WERE REFERRED TO AN AD HOC WORKING GROUP CHAIRED BY
THE CONFERENCE CHAIRMAN. AS EXPECTED, THE DEBATE
INDICATED STRONG RESISTANCE TO COMPULSORY ARBITRATION
OR ADJUDICATION BY THE ICJ. THE UK WILL PRESENT A REVISED
39 BIS TO THE WORKING GROUP SEEKING TO MEET SOME OF THE
POINTS RAISED IN THE DEBATE WHILE PRESERVING THE BASIC
FEATURES OF THE U.S. PROPOSAL, INCLUDING THE COMPULSORY
DISPUTE SETTLEMENT PROCEDURE AND OPTING OUT POSSIBILITY.
HOWEVER, WITH SUPPORT FOR COMPULSORY DISPUTE SETTLEMENT
PROCEDURES LIMITED PRIMARILY TO THE WEO GROUP, AN OPTING
IN PROVISION MAY BE ALL WE CAN GET.

2. FOLLOWING A LONG DEBATE INDICATING VERY LITTLE
SUPPORT FOR THE U.S. PROPOSAL FOR A NEW ARTICLE 37 BIS
ON OBJECTIONS TO SUCCESSION TO TREATIES, THE U.S.
WITHDREW ITS PROPOSAL WITH A STATEMENT INDICATING THAT
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THE PROBLEM SHOULD BE INCLUDED IN THE WORKING GROUP'S
DISCUSSIONS ON DISPUTE SETTLEMENT.

3. THE NETHERLANDS WITHDREW ITS PROPOSAL FOR A NEW
ARTICLE 40 ON THE RELATION BETWEEN THIS CONVENTION AND
THE VIENNA CONVENTION ON THE LAW OF TREATIES. THE
CONSENSUS WAS THAT A REFERENCE TO THE VIENNA CONVENTION

AND TO CUSTOMARY INTERNATIONAL LAW CAN BE INCLUDED IN
THE PREAMBLE.

4. FOLLOWING VERY LONG DEBATE ON ARTICLE 33 FOCUSING
ON PROPOSALS TO DELETE PARAGRAPH 3 OF THE ILC TEXT OF
ARTICLE 33, PARAGRAPH 3 WAS DELETED AND THE REMAINING

PARAGRAPHS 1 AND 2 WERE APPROVED UNCHANGED FROM THE ILC
DRAFT AS ARTICLE 33. THE U.S. MADE A STATEMENT
EXPRESSING DOUBTS AS TO PARAGRAPH 3 AND VOTED FOR ITS DE-
LETION. THE VOTING WAS AS FOLLOWS. THE FRENCH-SWISS
PROPOSAL TO DELETE PARAGRAPH(1) (A) WAS REJECTED 7-69
(US)-9. THE FRG AMENDMENT TO PARAGRAPH 1 (B) WAS
REJECTED 5-57(US)-20. PARAGRAPH 1 WAS ADOPTED 77(US)-3-5.
PARAGRAPH 2 WAS ADOPTED 80-0-3. THE FRENCH-SWISS AMEND-
MENT TO DELETE PARAGRAPH 3 WAS ADOPTED ON A ROLL CALL
VOTE 52 (US)-9-22. ARTICLE 33 AS AMENDED MINUS PARAGRAPH
3 WAS ADOPTED 73 (US)-4-6.

5. WE BELIEVED THAT THE SURPRISING MAJORITY IN FAVOR
OF DELETING PARAGRAPH 3 OF THE ILC TEXT WAS DUE TO (1)
WIDE CONCERN AS TO THE UNCERTAIN SCOPE OF THE PROVISION
AND THE POSSIBILITY THAT IT MIGHT BE ABUSED BY SUCCESSOR
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STATES SEEKING A LOOPHOLE TO AVOID THE CONTINUITY
PRINCIPLE IN PART IV OF THE CONVENTION, AND (2) A STRONG
CONCERN ON THE PART OF MANY AFRICAN AND ASIAN STATES THAT
PARAGRAPH 3 MIGHT ENCOURAGE SECESSION, OR AT LEAST MAKE
IT EASIER.

7. ARGENTINA IS REVISING ITS PROPOSAL FOR A NEW ARTICLE
39 TER AND DEBATE ON THIS PROPOSAL HAS BEEN POSTPONED.

8. THE COMMITTEE OF THE WHOLE WILL NOT MEET ON AUGUST 9
AND 10 IN ORDER TO ALLOW TIME FOR MEETINGS OF THE WORKING
GROUP ON ARTICLES 6,7, AND12, AND OF THE WORKING GROUP ON
DISPUTE SETTLEMENT. WOLF

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